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OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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April 22, 2005

Michael H. Mulhern, General Manager
Massachusetts Bay Transportation Authority
10 Park Plaza, Room 3910
Boston, MA 02116

Re: MBTA Safety Department Final Report 04-CR01, West Street Grade Crossing, Beverly, Massachusetts

Dear Mr. Mulhern:

The Department of Telecommunications and Energy ("Department") has reviewed the above-referenced Report that was submitted by the Massachusetts Bay Transportation Authority ("MBTA") concerning its investigation of the fatal accident that occurred at West and Hale Streets in Beverly, Massachusetts on October 13, 2004. In its Report, the MBTA recommended safety measures that could be implemented in an effort to prevent similar accidents. As detailed herein, the Department authorizes the MBTA to implement safety measures and requests that the City of Beverly enact specific safety protocols in order to prevent similar accidents.

As noted in its Report, the MBTA's Safety Department found that the primary cause of this accident was the 14-year-old bicyclist's failure to heed the warning devices and traffic control markings at the crossing, which indicated that a train was approaching. The Report notes that the warning devices at the crossing were visible and subsequently tested to be functioning properly at the time of the accident. Moreover, the Report concludes that the train's engineer adhered to operational mandates, and that there was no mechanical failure leading to the accident.

In addition to assessing the cause of the accident, the MBTA recommends that several safety measures be implemented in order to prevent similar accidents from happening. Each

recommendation is designed to improve highway/railroad grade crossing safety. Accordingly, the Department directs the MBTA to take the following immediate actions in Beverly regarding two recommendations in the Report:

- (1) Re-wire the bells connected to the gate mechanism to have these bells continue to ring until the gate arm returns to the vertical position. Currently, these bells shut off once the gate arm is in the lowered position. See Report Recommendation Number 5.
- (2) Replace the existing gate arms with 3/4 length gate arms at the West Street crossing and, if feasible, at all other public crossings in Beverly.¹ See Report Recommendation Number 6.

Moreover, the Department requests the City of Beverly to implement the MBTA's recommendations as stated at Numbers 7, 8, 9 and 10, which concern the relocation of yellow pedestrian crossing signs, replacement of the sign that provides advanced warning of a train crossing, installation of a "No Train Horn Sign", removal of vegetation in order to improve the ability to see the grade crossing, and repainting of roadway pavement markings at the crossing.

The Department directs the MBTA to notify us once the above-listed safety measures have been implemented. In the interim, the Department will maintain the directive that was issued by the Transportation Division Director on October 13, 2004, wherein he ordered the sounding of locomotive train horns at West Street in Beverly. After notification by the MBTA that the implementation of the safety measures is complete, the Department will reevaluate its decision and determine whether to allow the reinstatement of the train whistle ban at the West Street crossing in Beverly.

With regard to the remaining recommendations, we have directed Brian Cristy, the Department's Director of Transportation, to work with the MBTA towards implementing safety systems and other protocols (as noted in recommendations 1-4) for all public highway/railroad grade crossings.

¹ According to the 2003 Manual on Uniform Traffic Control Devices at Section 8D.04 ("Automatic Gates"), "the gates should cover the approaching highway to block all motor vehicles from being driven around the gate without crossing the center line" of the highway.

Thank you for your attention to this matter.

Sincerely,

Paul G. Afonso, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Judith F. Judson, Commissioner

cc: Beth Lindstrom, Director, Office of Consumer Affairs and Business Regulation
John S. Ziemba, Acting Secretary, Executive Office of Transportation
Andrew O. Kaplan, General Counsel, DTE
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